

Victim Compensation Program Draft Proposed Regulations

The California Victim Compensation and Government Claims Board is conducting a comprehensive review of the VCP Program regulations. We have noted numerous suggestions for clarity and consistency with statutes or case-law, including recommending the elimination of some regulations. For example, we are proposing revisions to reflect the commonly used program name “VCP” and other terms used by the VCP staff and to delete language that repeats the statute. Such suggestions are considered technical changes under Title 1, California Code of Regulations section 100, that do not “not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of a California Code of Regulations provision.”

We are also reviewing our existing regulations for possible improvement, including clarifying language regarding the content of the application factors that may be considered to find good cause for late applications, as well as mitigation of involvement in the events leading up to the qualifying crime. There are other areas that we have determined require new regulations to codify the Board’s interpretation of its statutes. We solicited input from joint-powers, victim witness assistance centers, providers and other stakeholders regarding ways to improve the VCP program regulations. We are proposing new regulations regarding relocation expenses, funeral burial expenses, income and support loss, medical-related expenses, authorized mental health providers, human trafficking, and rehabilitation.

The proposed regulations do not include the maximum rates and service limitations for medical and medical-related services and for mental health treatment, which to be filed with the Secretary of State pursuant to Government Code section 13957.2(a). We also did not address the VCP hearing regulations, which will be considered separately in another process.

Below please find a summary of our proposed changes to the VCP regulations. We welcome your feedback! There also will be an opportunity to comment on any proposed regulations at a later date when we publish proposed regulations for formal public comment.

- **Rule 649 Definitions**

Propose revisions to reflect the commonly used program name “VCP” and other terms used by the VCP staff and to delete language that repeats the statute. We also recommend revising the definitions to recognize registered domestic partners as derivative victims.¹

Propose language clarifying that salary, sick leave or bereavement leave are collateral benefits.

¹ Fam. Code, §§ 275 & 297.

- **Rule 649.2 Qualifying Crime Occurring Outside California**

Propose language to clarify when the VCP staff considers benefits provided by another state to be exhausted.

- **Rule 649.3 Vehicle-Related Qualifying Crime**

Propose deleting this regulation in its entirety because it mirrors the statute.

- **Rule 649.4 Eligibility of Felons**

Propose to revise to reflect the name “VCP” and to correct grammar.

- **Rule 649.6 Effective Date of Substantive Changes**

Propose deleting this regulation in its entirety because it conflicts with Government Code section 13959(d), which states that the Board will apply the law in effect as of the date that the application is submitted. Further, a regulation that conflicts with a statute is void.

- **Rule 649.7 Complete Application**

Propose to change to reflect the name “VCP” and other clarifying language. Propose that 649.23 Certification should also be addressed in this regulation rather than a separate regulation.

Propose adding new language to section 649.7(a)(9) requiring an applicant to contact and repay the VCP if the applicant receives a civil suit settlement, judgment, or money from another source to cover expenses paid by the VCP.²

Propose revising section 649.7(b)(1) to clarify that the VCP staff psychologist or psychiatrist may request mental health treatment notes when needed and to specify the manner in which the VCP should handle mental health treatment notes. Currently, the mental health guidelines provide that the VCP may require the submission of any other information required to determine whether the treatment will best aid the victim or derivative victim and is necessary as a direct result of the qualifying crime.³ Some mental health providers refuse to provide treatment notes, and the proposed language is intended to clarify and specify that the VCP may request the treatment notes.

Propose revising the language in section 649.7(c) permitting the VCP staff to accept “in lieu of” crime reports, instead of the complete crime report. The Court of Appeals has found that, because the Board has the burden of proving that an applicant is not eligible for benefits, the Board must obtain a complete copy of the

² Gov. Code, 13952.5 and 13963.

³ Victim Compensation and Government Claims Board, Mental health guidelines, section VI(b) (2006).

crime report pursuant Government Code section 13954(d) if it is going to deny an application.⁴ Therefore, the Court found that the current language in the regulation conflicts with Government Code section 13954(d) and is void.⁵

The proposed change to the regulation is required to conform to the court's direction in the *Gregory* case. Government Code section 13954(d) requires law enforcement to provide the complete report upon request. In some cases, the Program may be able to verify that a qualifying crime occurred even though there is no police report. The Program still can determine the necessary level of verification to approve a request for reimbursement if there is sufficient documentation to show that the expenses are necessary as a direct result of the crime.

Based upon the *Gregory* decision, the Program must obtain the complete police report if it intends to deny an application. We determined, however, that it was not practical to give a definition of a complete police report in a regulation. Law enforcement must complete whatever reports are necessary for its investigation based upon the specific facts of a particular crime. Further, various jurisdictions define a complete police report differently. The Board has worked to educate law enforcement and city attorneys of law enforcement's obligation to provide police reports to the Program and has been able to obtain police reports.

- **Rule 649.8 Emergency Awards**

Propose to revise to reflect the name "VCP."

- **Rule 649.9 Incomplete Applications**

Propose that this regulation be repealed in its entirety because it is redundant with Government Code section 13952(c)(2), which provides that the VCP staff communicate with the applicant if it does not contain all the required information.

- **Rule 649.10 Zero Awards**

Propose that this regulation be repealed in its entirety because it is redundant with Rule 649.11 and the VCP no longer uses the term "zero award."

- **Rule 649.11 Application Without Verified Pecuniary Loss**

Proposed that Rule 649.11 be revised to include language from Rule 649.10 to clarify how the VCP staff handles applications with no verified pecuniary loss.

⁴ *Gregory v. State Board of Control* (1999) 73 Cal. App. 4th 584, 594. Law enforcement may only redact witness names during an on-going investigation. *Id.*

⁵ *Id.*

- **Rule 649.12 Third Party Applications**

The regulation states that third parties shall not file applications. Propose revision to clarify that third parties are not eligible to file application.

- **Rule 649.13 Derivative Victims Who Previously Had a Relationship with Victim Substantially Similar to a Family Member**

Propose that the requirement of section 649.13(c)(1) that a person in a relationship similar to a spouse live with the victim for at least six months be deleted because it conflicts with the two year requirement of Government Code section 13955(c).

Propose that section 649.13(d), which states that where a person has a relationship with a victim similar to a spouse, neither party may have a similar relationship with any other person be deleted. This factor is irrelevant to a person's status as a derivative victim.

- **Rule 649.14 Victim or Derivative Victim Election**

Propose that the language from this regulation be added to 649.16 and this regulation be deleted in its entirety.

- **Rule 649.15 Time for Presenting Applications**

Propose revisions to explain how VCP staff determines that good cause exists to allow the late filing of an application. Many late applications also raise the issue of whether there is a preponderance of the evidence that a qualifying crime occurred. Often late applications accepted for good cause are later denied for lack of evidence that a qualifying crime occurred. Propose that these issues be considered concurrently.

At least one court in another jurisdiction has found that the statute of limitations should be tolled in some circumstances to fulfill the purpose of the statute to compensate victims of crime.⁶ The revisions provide that if a person can show that they were a victim of crime and have good cause for the late application, the claim may be allowed.

- **Rule 649.16 Timely Filing of Application for Derivative Victim**

Propose to include language from existing Rule 649.14 for clarity and easier reference.

- **Recommend New Rule 649.17 Relocation Benefits**

Propose new rule to codify various elements that the VCP staff consider in reviewing requests for relocation benefits, including increasing the level of

⁶ *White v. Violent Crimes Compensation Board* (1978) 76 NJ 386.

scrutiny in correlation to the amount of time that has elapsed since the qualifying crime occurred.⁷

Propose that the new rule also explains the limitation stated in Government Code section 13957 that relocation benefits only be awarded to one victim per crime giving rise to the relocation.

- **Recommend New Rule 649.18 Funeral Burial**

Propose new rule to codify the Board's interpretation of the VCP statutes.

- **Rule 649.22 Supplemental Claim Process**

Propose changes with no regulatory effect to clarify that applications and supplemental claims are considered in the same manner.

- **Rule 649.23 Certification**

Propose to delete this regulation in its entirety and move this language to section 649.7 "Complete Applications" for easier reference.

- **649.23 Medically-Related Services**

Propose rule to specify some of the medically-related services currently recognized by the VCP. The Board should file any maximum rates and service limitations with the Secretary of State in connection with the new rule.

- **Rule 649.24 Authorized Indemnification**

Propose to delete the reference to Government Code section 13951(e)(definition of pecuniary loss) because it is unnecessary and confusing. Only expenses authorized by Government Code section 13957 are covered by the VCP.

Also propose to revise to include language from section 649.25 "Reimbursement Calculation" for easier reference.

- **Rule 649.25 Reimbursement Calculation**

Delete this regulation in its entirety and move this language to 649.24 "Authorized Indemnification" for easier reference.

- **Rule 649.25 Rehabilitative Services**

Propose new rule to include language explaining the VCP's interpretation of its statutory requirement that it is the payer of last resort to require that victims first apply to the Department of Rehabilitation for services prior to receiving rehabilitative benefits from the VCP.

⁷ Precedent Decision, 03-02.

- **Rule 649.26 Objection to Direct Payment**

Propose revisions to reflect the name “VCP.”

- **Rule 649.27 Third Party Verification**

Propose to revise to reflect the name “VCP.”

- **Rule 649.29 Authorized Mental Health Providers**

Section 13957(a)(2)(D)(i-ii) authorizes certain providers noted in the Government Code on January 1, 2002 to provide mental health treatment. The types of providers are not listed in the statute. Propose rules to identify the types of providers that are authorized for easier reference.

- **Rule 649.30 Lien**

Propose to revise to reflect the name “VCP.”

- **Rule 649.31 Collateral Benefits**

Propose to revise to reflect the name “VCP.”

- **Rule 649.32 Verification of Income or Support Loss**

Propose new rule to codify various elements that the VCP staff considers in verifying requests for income and support loss.

- **Rule 649.33 Derivative Victims Eligible for Support Loss**

Propose new rule to codify various elements that the VCP staff consider when reviewing requests for support loss by derivative victims.

- **Rule 649.35 Duty of Local Law Enforcement Agencies**

Propose to revise to reflect the name “VCP.”

- **Rule 649.36 Victims of Crime Liaison Officer**

Propose to revise to reflect the name “VCP.”

- **Rule 649.48 Human Trafficking**

Propose new rule to codify various elements that the VCP staff consider in reviewing alleged human trafficking crimes.

- **Rule 649.50 Involvement in a Vehicle-Related Qualifying Crime**

Propose revisions to clarify the requirements regarding involvement for minor victims. Also propose language to further define when a victim or derivative victim is involved in a vehicle-related crime.

- **Rule 649.51 Participation in the Qualifying Crime**

Propose revisions to clarify that an applicant would not be eligible if they were participating in any crime when they were injured.

- **Rule 649.57 Mitigation of Involvement in the Events leading to the Qualifying Crime**

Propose allowing limited benefits for those applicants that were found to be involved in the events leading to the crime, but only if the involvement was mitigated in some fashion. Such applicants would be entitled only to reimbursement for medical and funeral burial expenses. The VCP believes that granting benefits based upon percentages would present administrative problems.

- **Rule 649.58 Self Defense**

Propose to delete the reference to derivative victims. We are not aware of any instance that involved self defense by a derivative victim.

- **Rule 649.59 Failure to Cooperate with Law Enforcement**

Propose new language that significant weight may be given to the evidence from law enforcement when determining whether the victim or derivative victim cooperated with law enforcement. The Program is aware of concerns regarding how this would apply to sexual assault or child abuse cases. The statute that is the basis for the regulation does not distinguish between sexual assault or child abuse cases and other crimes.⁸ Generally, the victim's age, physical condition, psychological or emotional condition, compelling health of personal safety factor or fear of retaliation would be a mitigating factor considered with respect to an applicant's lack of cooperation.⁹ The eligibility of a minor is not affected by the failure of the minor's parent or guardian to cooperate with law enforcement.¹⁰

The proposed language would not apply in the case of domestic violence. Domestic violence cases are treated differently from other types of crime by statute.¹¹ There is a separate regulation, Rule 649.60, with specific criteria for lack of cooperation in a domestic violence case.

⁸ Gov. Code, 13956.

⁹ Rule 649.59(i).

¹⁰ Rule 649.59(l).

¹¹ Gov. Code, 13956(b)(2).

- **Rule 649.62 Failure to Cooperate with Board of Staff**

Propose new language that an applicant who provides false material information may be found to have failed to cooperate with the Board. This would allow the Board to deny an application or requested benefits when an applicant provides false material information.

DRAFT

STATE OF CALIFORNIA
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 1. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME

PROPOSED TEXT

Text proposed as a new regulation, or to be added to an existing regulation, is shown in underlined type. Text to be deleted from an existing regulation is shown in ~~strikeout~~ type.

(1) Amend section 649. to read as follows:

649. Definitions

(a) As used in this article:

(1) "Applicant" means a person submitting either an application as defined in subsection (a)(2) or a supplemental claim as defined in subsection (a)(23).

(2) "Application" means an initial application for assistance into the Victims of Crime Program (VCP) under Government Code sections 13950-13974.5.

(3) "Board" means the Victim Compensation and Government Claims Board or VCGCB.

(4) "Certification under penalty of perjury" or "upon information and belief" as applied to the filing of an application or supplemental claim means a single signature under penalty of perjury or information and belief as required to certify that the contents of the application or supplemental claim are true and correct within the knowledge or belief of the applicant.

(5) "Code" means the California Government Code.

(6) ~~"Collateral benefits" shall include but not be limited to the following types of benefits:~~

~~(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, liability and casualty insurance including vehicle, commercial and residential insurance.~~

~~(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi-Cal, social security, state disability insurance, Worker's Compensation and Medicare.~~

~~(C) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.~~

(67) "Denial of the application" as used in Section 13958 of the code and as construed for purposes of the ~~board~~Board hearing process means a preliminary determination and recommendation for disallowance by ~~board~~VCP staff and shall not be construed to mean a final administrative decision following a hearing by the ~~board~~Board to deny the application or supplemental claim.

(78) "Derivative victim" means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(89) "Direct payment" as used in Section 13957.7(c)(1) of the code shall be those payments sent directly to providers when there is no objection by the victim or derivative victim, or when good cause is demonstrated, notwithstanding a victim's or derivative victim's objection.

(940) "Family member" means a person who is related to the victim at the time of the qualifying crime by blood, marriage, registered domestic partnership, or adoption.

(10) fiancé or fiancée means a person who is engaged to be married or an unregistered domestic partner in a similar relationship.

(11) "File" or "filed" as it applies to an application or supplemental claim for ~~VOC-VCP~~ benefits means submitting the application or supplemental claim to the ~~board~~VCP or a joint powers victim witness center. An application or supplemental claim shall be deemed filed with the ~~board~~VCP or a joint powers victim witness center on the date that the application or supplemental claim is postmarked by the United States Postal Service or other private carrier postage prepaid and properly addressed, or on the date that it is personally delivered to the ~~board~~VCP or a joint powers victim witness center.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13964.

(13) "Hearing" means the same as under article 2.5 of these regulations.

(14) ~~"Injury" means the same as in Government Code section 13955(f).~~

(1415) "Joint powers victim witness center" means an agency under contract with the ~~board~~Board to process applications under Government Code section 13954(c).

(1516) "Law enforcement agency" includes but is not limited to means:

~~(A) an agency authorized to investigate or prosecute violations of law, including but not limited to:~~

- ~~1. a city police department;~~
- ~~2. a county sheriff's department;~~
- ~~3. a district attorney's office;~~
- ~~4. the California Highway Patrol; and~~
- ~~5. the Office of the California Attorney General.~~

(AB) an agency from California or another state that investigates or prosecutes violations of law that are comparable to agencies listed in Section 13951(d) in ~~subsection (a)(16)(A); and~~

(BG) ~~federal~~ Federal agencies that investigate or prosecute violations of law.

~~(16-17)~~ "May" means that the conduct or requirement is permissive and discretionary.

~~(17-18)~~ "Qualifying crime" means a crime as defined in Government Code section ~~13960(e)~~ 13951(b) that resulted in one of the following:

- (A) injury to the victim;
- (B) threat of injury to the victim; or
- (C) the death of the victim.

(18) "reimbursement sources" shall include but not be limited to the following types of benefits:

(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, liability and casualty insurance, including vehicle, commercial and residential insurance.

(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi-Cal, social security, state disability insurance, Worker's Compensation and Medicare.

(C) Any salary, sick leave, or bereavement leave.

(D) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.

(19) "Related to the victim by blood, marriage, registered domestic partnership, or adoption" means:

(A) the victim's spouse or domestic partner;

(B) relatives within the 4th degree of the victim or the victim's spouse as follows:

1. first degree relatives include parent and child;
2. second degree relatives include grandparent, brother, sister, and grandchild;
3. third degree relatives include great-grandparent, uncle, aunt, nephew, niece, and great-grandchild;
4. fourth degree relatives include great-great- grandparent, great uncle, great aunt, first cousin, grandnephew, and grandniece;

(C) the spouse of a person or registered domestic partner described in subsection (a)(19)(B); or

(D) the victim's fiancé or fiancée.

(20) "Resident of California" means the person's place of residence is California as determined by one of the following:

- (A) Government Code section 244 for adults; and
- (B) Welfare and Institutions Code section 17.1 for minors.

(21) "Shall" means that the conduct or requirement is mandatory and not discretionary.

(22) "State" means the District of Columbia, the Commonwealth of Puerto Rico and any other possession or territory of the United States.

(23) "Supplemental claim" means a request for ~~assistance~~ payment submitted after the application is received.

(24) "Threat of physical injury" means conduct that meets both of the following:

(A) a reasonable person would feel threatened in the same circumstances as the victim; and

(B) a reasonable person in the same circumstances as the victim would believe both of the following:

1. the threat would be carried out; and
2. physical injury would result if the threat were carried out.

(25) "Victim" means a person who sustained injury or death as a direct result of a qualifying crime and is one of the following:

(A) a resident of California;

(B) a member of the military stationed in California;

(C) a family member living with a member of the military stationed in California; or

(D) a nonresident of California who is a victim of a qualifying crime occurring within California if the ~~board~~ Board determines that federal funds are available for compensation of victims of crime.

(26) ~~"VOCVCP"~~ means the Board staff that implement the Victims of Crime ~~Program~~ as specified in Title 2, Division 3, Part 4, Chapter 5, Article 1 of the Government Code, commencing with Section 13950.

(27) "Water vehicle" means the same as "vessel" as defined in Harbors and Navigation Code section 651(g).

(28) "Witnessed the crime" as used in Section 13955(c)(4) of the code means actual physical presence at the scene of the qualifying crime such that the person was a percipient witness to the qualifying crime.

~~(29) "Zero award" means a determination of eligibility for assistance that does not involve a determination concerning monetary assistance for any pecuniary loss.~~

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13956, 13957.7, 13958, 13959, 13964 and 13964, Government Code.

§ 649.2. Qualifying Crime Occurring Outside California

(a) A California resident who is a victim of a qualifying crime that occurred outside California shall ~~first~~ apply first for assistance in the state where the qualifying crime occurred.

(1) Subsection (a) shall not apply if the qualifying crime occurred in a state that does not provide assistance to a non-resident victim.

(b) A California resident who is a victim of a qualifying crime outside California who is eligible for assistance shall not receive assistance until one of the following occurs:

(1) the program of the state in which the qualifying crime occurred determines that the person is not eligible for the program; or

(2) the program benefits of the state in which the qualifying crime occurred are exhausted or denied or requested benefits are not eligible for reimbursement by the other state.

(c) This section does ~~shall not~~ apply if the qualifying crime occurred both inside and outside California.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

Rule 649.3 restates Government Code section 13955(e)(2) and should be repealed. To the extent that it adds to the statute, it is not valid.

~~§ 649.3. Vehicle-Related Qualifying Crime~~

~~(a) No act involving the operation of a motor vehicle, aircraft, or water vehicle constitutes a qualifying crime except as provided in subsection (b).~~

~~(b) Notwithstanding subsection (a), the following shall constitute qualifying crimes:~~

~~(1) injury or death intentionally inflicted through the use of:~~

~~(A) a motor vehicle;~~

~~(B) an aircraft; or~~

~~(C) a water vehicle.~~

~~(2) injury or death caused by a driver in violation of Vehicle Code section 20001 [Hit and run];~~

~~(3) injury or death by a person who is under the influence of an alcoholic beverage or drug;~~

~~(4) injury or death by a driver of a motor vehicle while fleeing the scene of a crime in which the driver knowingly or willingly participated;~~

~~(5) murder [Penal Code section 187] when a motor vehicle, aircraft or water vehicle is the instrumentality of the murder;~~

~~(6) gross vehicular manslaughter while intoxicated [Penal Code section 191.5];~~

~~(7) injury or death caused by a driver in violation of Penal Code section 192(c) [Vehicular manslaughter];~~

~~(8) causing bodily injury while driving under the influence of alcohol or drugs [Vehicle Code section 23153];~~

~~(9) injury or death caused by a driver in violation of Penal Code section 192.5 [Vehicular manslaughter in a vessel].~~

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

§ 649.4. Eligibility of Felons

(a) The ~~Board~~ VCP shall accept an application or a petition for relief to file a late application from a person who has been convicted of a felony in the same manner as for other applicants. Neither that the applicant is presently incarcerated nor that the applicant has been convicted of a felony and has not been discharged from probation or released ~~from~~from a correctional institution and discharged from parole shall be reason for the ~~Board~~ VCP to refuse to accept an application.

(b)(1) The ~~Board~~ VCP shall not grant assistance to a person who has been convicted of a felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is convicted of the felony and before the person is discharged from probation or has been released from a correctional facility and is discharged from parole, if any.

(2) The ~~Board~~ VCP shall grant assistance to a person otherwise eligible for assistance who has been convicted of a felony to compensate for pecuniary loss sustained as a result of victimization occurring after conviction and before discharge from probation or release ~~from~~from a correctional facility and discharge from parole, when the loss was incurred after discharge from probation or parole.

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person had been convicted of a felony and before the person was discharged from probation or released from a correctional institution and discharged from parole will not become reimbursable upon the person's discharge from probation or release from a correctional institution and discharge from parole.

(c) As used in this section, "parole" includes "supervised release."

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951 and 13956, Government Code.

This regulation conflicts with Government Code section 13959(d) and should be deleted.

~~§ 649.6. Effective Date of Substantive Changes~~

~~—(a) Unless otherwise required by law, a substantive change to eligibility shall be effective for applications resulting from a qualifying crime that occurred on or after the effective date of the substantive change.~~

~~(b) An effective date or date of limitation included in the express provisions of a regulation section shall apply if there is any conflict or inconsistency with this section.~~

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950-13974.5, Government Code.

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§ 649.7. Complete Application

Applications for assistance as specified in Section 13952 of the code ~~will~~ shall be deemed to be complete within the meaning of Section 13952(c) of the code only if:

(a) The applicant provides all information as directed in the instructions to, and as elicited on, the application which the ~~board~~ Board shall require to be certified under penalty of perjury or upon information and belief. As part of the application the ~~board~~ Board shall require the following information:

(1) The name, residence address, and if different, mailing address, ~~social security number~~, date of birth and telephone number of the applicant seeking restitution from the Fund.

(2) A designation as prescribed on the application as to whether the applicant is a victim or derivative victim, or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).

(3) If the person signing the application as the applicant is a person other than the actual victim or derivative victim seeking assistance, some designation as to the legal authority of such person to apply for benefits on behalf of the victim or derivative victim (e.g. parent or legal guardian for a child; or court appointed conservator for adults adjudicated to be incompetent.)

(4) A description of the date, nature, location, and circumstances of the qualifying crime.

(5) Except in the case where the applicant has no pecuniary loss, ~~of a request for "zero awards,"~~ a complete statement of losses and reimbursements directly related to the qualifying crime including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance. This statement must ~~shall~~ include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim and a description of the services provided along with a statement that the services were in fact received and that such services were required as a direct result of the qualifying crime and for no other reason. If mental health counseling or psychotherapy services were provided, the statement must ~~shall~~ include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.

(6) A signed authorization permitting the VCP board ~~board~~ or a joint powers victim witness center, or both, to verify the contents of the application.

(7) If the applicant is represented by an attorney or other authorized person, the name, address, telephone number and signature of such representative. If the representative is an attorney, the California State Bar license number and the tax payer identification number.

(8) A statement whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or any other parties in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant in such civil proceedings.

(9) A promise to contact and repay the VCP if the applicant receives any payments from the offender, a civil suit, an insurance policy, or any other governmental or private agency to cover expenses that the Program has already paid.

~~(9)~~ (10) A statement disclosing all collateral benefits including any private or public insurance or benefits payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Section 13957 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses incurred as of the date of the application including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services who are authorized by law to offer such services as part of their on-going business activity but who are not required to obtain a professional or occupational license must provide either their social security number or their Federal Employer Identification Number. The VCP may require the submission of mental health treatment session or progress notes in order to determine whether the treatment will best aid the victim or derivative victim and is necessary as a direct result of the qualifying crime. Session notes will be kept in a confidential locked file and after review, may be returned to the provider or destroyed by the VCP upon request of the treating provider.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider.

~~Evidence of loss of income may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number.~~

~~A statement of disability shall be signed by the medical or mental health provider and shall include information concerning the prognosis for recovery, the extent and expected duration of disability, and certification that the disability resulted directly from the qualifying crime.~~

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred ~~through the date of the application.~~

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.20(c) of these regulations.

(c) A copy of the crime report ~~or substitute reports as set forth herein~~ evidencing the commission of the qualifying crime and setting forth the circumstances and factual events surrounding it ~~has been received.~~

In order to expedite the processing of the application, applicants ~~shall~~will be encouraged to obtain and submit, along with the application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which the applicant or his or her representative are unable or decline to obtain such crime report, VCP or joint powers victim witness centers shall obtain the crime report.

No application shall be deemed complete until VCP or its contract agencies have received a copy of the crime report, unless VCP staff is otherwise able to verify that a qualifying crime occurred.

~~In cases in which the law enforcement agency deems it advisable to withhold a copy of the crime report from public disclosure in order to assure the security of innocent parties or the integrity of on-going criminal investigations, such agency may substitute a report that provides the facts of the qualifying crime, whether the victim or derivative victim participated in the commission of the qualifying crime, was involved in the events leading to the qualifying crime and whether the victim or derivative victim cooperated with law enforcement. In the event that no crime report was prepared, a declaration must be provided, signed under penalty of perjury by the victim or derivative victim, or in the case of a minor, by the adult having lawful supervision and custody of the minor upon information and belief, stating whether the qualifying crime was reported to a law enforcement agency, and if not, the reasons why, and providing information on all measures taken by the victim or derivative victim, or parties exercising custody and control of the victim or derivative victim to cooperate with law enforcement. In the event that no crime report was prepared the declaration shall include a narrative of the events leading up to and including the actual perpetration of the qualifying crime giving rise to the claim as well as the names of all witnesses.~~

(d) All applications and supplemental claims must be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, or by an authorized representative.

Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13952.5, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7, ~~and~~ 13957.9, and 13963 Government Code.

§ 649.8. Emergency Awards

(a) An applicant may indicate on the application that he or she is applying for an emergency award.

(b) Upon receipt of an application for an emergency award, the ~~Board~~VCP shall expedite the process of verifying the application to determine if an emergency award is appropriate. ~~The Board~~VCP staff shall make telephone calls and transmit documents electronically or by facsimile to quickly obtain information necessary to evaluate an application for an emergency award. A decision regarding an application for an emergency award shall be promptly communicated to the applicant.

(c) An emergency award may be allowed when it is necessary to avoid or mitigate a substantial hardship to the applicant that is the direct result of the qualifying crime. Substantial hardship shall include the following:

(1) The inability to provide for the necessities of life, including but not limited to shelter, food, medical care, or personal safety, without the emergency award.

(2) The inability to pay for funeral and burial expenses or crime scene cleaning expenses without the emergency award.

(d) The amount of an emergency award shall be based on the applicant's immediate financial need as a direct result of the qualifying crime. Immediate financial need shall be determined by the financial assistance needed to avoid substantial hardship before the receipt of non-emergency assistance.

(e) An applicant for an emergency award shall provide sufficient information to substantiate both of the following:

(1) An emergency award is necessary to avoid substantial hardship as a direct result of the qualifying crime; and

(2) The applicant has an immediate financial need for an emergency award as a direct result of the qualifying crime.

(f) If sufficient information as required by subdivision (e) is not provided, an application for an emergency award shall be processed as an application for non-emergency assistance. The amount of the emergency award being requested shall be considered when determining the amount or type of information required to verify the application for an emergency award.

AUTHORITY:

Note: Authority cited: Section 13920(c), Government Code. Reference: Section 13952.5, Government Code.

We recommend that this regulation be repealed in its entirety because is redundant with 13952(c)(2)

~~§ 649.9. Incomplete Applications~~

~~—Incomplete applications for emergency awards and supplemental claims shall be returned to the applicant for completion or appeal in the same manner as an incomplete application is returned to the applicant pursuant to Section 13952(c)(2) of the code.~~

AUTHORITY:

Note: Authority cited: Sections 13952, 13952.5 and 13974, Government Code.

Reference: Sections 13952 and 13952.5, Government Code.

DRAFT

We recommend that Rule 649.10 be repealed because the Program does not use the term “zero award” and it is redundant with 649.11.

~~§ 649.10. Zero Awards~~

~~—In cases where VOC determines that the application filed by the applicant merely seeks an initial determination of eligibility without reference to specific pecuniary loss, or where the applicant fails to produce evidence of pecuniary loss as required in Section 649.7(b) of these regulations, the board shall process the application as a “zero award”. In such cases the VOC notice of eligibility to the applicant and his or her representative within a period of 90 days from the acceptance of a complete application shall constitute compliance with the average 90 day processing requirement as set forth in Section 13957.2(c) of the code. The issuance of a zero award shall not obligate the board to pay claims until it has received fully verified evidence of pecuniary loss by the victim or derivative victim, and has satisfied itself that no other source of benefits or assistance is available to the victim or derivative victim to compensate for this loss.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Section 13957.2, Government Code.

§ 649.11. Application Without Verified Pecuniary Loss

When an applicant files an application for assistance supplying all of the required information as set forth in paragraph (a) of Section 649.7 but either fails or declines to provide any of the information needed to verify actual pecuniary loss as set forth in paragraph (b) of Section 649.7, the VCP may make an initial determination of eligibility. If the VCP determines that the applicant is eligible, the VCP shall treat the application as an application for a zero award, accepted for processing and so notify the applicant and his or her representative. The acceptance of an application does not obligate the VCP to pay claims until it has received fully verified evidence of pecuniary loss by the victim or derivative victim, and has satisfied itself that no other source of benefits or assistance is available to the victim or derivative victim to compensate for this loss.

Nothing in this section shall be construed to prevent ~~VOC~~VCP from paying those claims for which documentation required by subparagraph (b) of Section 649.7 has been provided ~~while treating the balance of any claims for which information required by that regulation has not been submitted as an application for a zero award.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957, Government Code.

§ 649.12. Third Party Applications

Under the provisions of Government Code Section 13951(g), "victim" does ~~shall~~ not include an "individual" who merely provides medical or medically related services, funeral and/or burial services, estates, or corporations. Further, ~~the aforementioned providers, estates, or corporations are not eligible to shall not file an application claims for indemnification with the VCP Board. All such expenses shall be paid based upon the submission of such expenses through the particular qualifying victim or his or her representative.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Section 13951, Government Code.

DRAFT

§ 649.13. Derivative Victims Who Previously Had Relationship with Victim Substantially Similar to Family Member

For the purpose of qualifying as a derivative victim under Government Code section 13951(c), the two-year period during which the person lived in the victim's household in a relationship substantially similar to that of a parent, sibling, spouse or child may be either cumulative or consecutive in the following instances:

(a) A person may be found to have a relationship with a victim that is substantially similar to that of a parent if the person provided a significant portion of the necessities of life for the victim, including but not limited to the following:

(1) financial support;

(2) food;

(3) clothing;

(4) shelter;

(5) medical expenses;

(6) educational expenses;

(7) emotional support.

(b) A person may be found to have a relationship with a victim that is substantially similar to that of a child if the victim provided the person a significant portion of the necessities of life as listed in subsection (a).

~~(c)~~ A person may be found to have a relationship with a victim that is substantially similar to that of a sibling if the person:

(1) previously lived in the same household as the victim; and

(2) was under the care of the same parent or parents, primary caretaker, or legal guardian.

~~(d)~~ Factors that may be considered when determining whether a person has a relationship with a victim that is substantially similar to that of a spouse include, but are not limited to:

(1) previously lived ~~residence~~ in the same household ~~for at least 6 months~~;

(2) joint ownership of a residence;

(3) joint ownership of a motor vehicle;

(4) use of a joint bank account;

(5) use of a joint credit card account;

(6) maintenance of a sexually or emotionally intimate relationship;

(7) a significant portion of the items listed in subsection (a) are shared with, or provided to the victim.

~~(d) In order to be found to have a relationship with a victim that is substantially similar to that of a spouse under subsection (c), neither party to the relationship shall have a relationship that is substantially similar to that of a spouse with any other person.~~

~~(e) A person may be found to have a relationship with a victim that is substantially similar to that of a child if the victim provided the person a significant portion of the necessities of life as listed in subsection (a).~~

~~(f) For the purpose of qualifying as a derivative victim under Government Code section 13951(c), the two-year period during which the person lived in the victim's household in a relationship substantially similar to that of a parent, sibling, spouse or child may be either cumulative or consecutive.~~

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955(c), Government Code.

DRAFT

We recommend that the language from this regulation be added to 649.16 and this regulation be repealed in its entirety.

~~§ 649.14. Victim or Derivative Victim Election~~

~~—A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime.~~

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13952, Government Code.

DRAFT

§ 649.15. Time for Presenting Applications Good Cause for Filing Late Applications

~~—(a) A victim or derivative victim of a qualifying crime pursuant to Government Code section 13951 shall file the application for VOC assistance within one year of the date that the qualifying crime occurred or one year after the victim attains the age of 18 years, whichever is later.~~

~~(b) An application filed after the expiration of the period of limitations set forth in paragraph (a) of this section shall not be accepted. If: (i) The application is filed within three years of the date of the qualifying crime or three years after the victim attains the age of 18 years, whichever is later; or (ii) The application is filed on or before October 3, 1994, the applicant and his or her representative will be notified that the application has not been filed in a timely manner and that they have a right to petition the board for relief on grounds that good cause exists for the late filing as specified in Section 13953(b) of the code. Petitions for relief on such grounds shall be in the form of a written statement signed under penalty of perjury that sets forth the reasons why the applicant was unable to file his or her application within the one year period of limitations specified by Government Code section 13953.~~

(a) A petition for relief from the period of limitations on grounds of good cause must be filed with the Board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein will have his or her application denied and shall be deemed to have waived any right to relief from the period of limitations.

(b) In determining whether good cause exists justifying the late filing of an application, the VCP staff must consider the following factors, including but not limited to:

- (1) A preponderance of the evidence supports that a qualifying crime occurred;
- (2) Circumstances of the qualifying crime;
- (3) Age;
- (4) Documented physical or mental disability to such an extent during the time specified for filing an application that the applicant could not have effectively pursued a claim and the victim did not have a conservator; and
- (5) Cultural or linguistic barriers.

An applicant seeking relief from the period of limitations on the filing of a claim may, with his or her petition for relief and accompanying statement, include any corroborating documents which serve to verify the stated justifications for late filing.

~~(c) Upon a timely petition for relief under subsection (ea), the board may either grant relief upon the recommendation of VOC staff, If VCP staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request board shall schedule a hearing to determine the existence or nonexistence of good cause, and shall notify the applicant and his or her representative of the time and place of the hearing.~~

~~(d) In all cases the determination by the ~~board~~Board as to the existence or nonexistence~~

of good cause shall constitute the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this section shall be construed to prevent an applicant or his or her representative from filing the above stated declaration and petition for relief upon a showing of good cause simultaneously with the late application.

~~(e) A petition for relief from the period of limitations on grounds of good cause shall be filed with the board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein shall have his or her application returned and shall be deemed to have waived any right to relief from the period of limitations.~~

~~(f) An applicant seeking relief from the period of limitations on the filing of a claim may, with his or her petition for relief and accompanying statement, include any corroborating documents which serve to verify the stated justifications for late filing.~~

~~(g) For purposes of the period of limitations as stated herein, the timely filing of an application, signed and dated, including the name, address and telephone number of the applicant, and the victim if different, prior to the expiration of the period of limitations shall be sufficient to perfect an application as against the period of limitations.~~

~~(h) If the application as filed is deemed to be incomplete, it shall be returned to the applicant in accordance with the terms of Section 13952(c) of the code and the period of limitations shall be deemed suspended during the 30 days specified in that section as well as during any period pending a hearing by the board as set forth therein. If no action is taken by the applicant on the application during the 30 days as specified in the code, the application shall be deemed abandoned and the period of limitations shall again commence to run.~~

~~(i) An incomplete application returned to the applicant with notice as to the deficiency as specified in Section 13952(c) shall be deemed received by the applicant five days after it is deposited in the United States mail properly addressed and postage prepaid. Return of information sufficient to complete the application shall be deemed filed on the date postmarked by the United States Postal Service or other carrier, postage prepaid and properly addressed.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

§ 649.16. Timely Filing of Applications for by Derivative Victims

(a) The period of limitations for filing an application under section 649.15 ~~shall be~~ is tolled for derivative victims when an application is timely filed under section 649.15 by a victim or on behalf of a victim for the same qualifying crime.

~~(b) Board staff need not review, verify, or act upon an application under Government Code section 13952 and 13954 from a derivative victim whose period of limitations for an application under section 649.15 was tolled under subsection (a) until a request for monetary assistance or reimbursement is submitted by or on behalf of the derivative victim.~~

(c) A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime.

(d) A person shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13952, and 13953, Government Code.

DRAFT

Adopt § 649.17 as a new regulation.

§ 649.17. Relocation

(a) All cash payments or reimbursement for expenses incurred in relocating must be necessary as a direct result of the crime. The amount of reimbursement paid by the Board shall not exceed the statutory maximum, less the amount of reimbursement available from other sources.

(b) Determinations by law enforcement or mental health providers may be provided in a manner determined by the Board, which may include, but are not limited to, in writing, by telephone, or other electronic means.

(c) One victim per crime giving rise to the relocation means that only one member of a family may receive relocation benefits even if more than one member of a family is a direct victim of the qualifying crime.

(d) A higher level of scrutiny will apply to reimbursement requests if a significant amount of time has elapsed between the qualifying crime and the date of the relocation.

(e) Relocation expenses may include but are not limited to housing deposits, utility deposits, telephone deposits, connection fees, temporary lodging costs, food expenses, clothing costs, costs of personal items, and other necessary expenses.

(f) When the offender is known to the victim, if the victim informs the offender of the new relocation address, the victim will be subject to the overpayment provision of Government Code section 13965 regarding any relocation payments made. Should the offender discover the victim's address without the victim's knowledge, the victim should not allow the offender on the premises and must seek a restraining order or be subject to the overpayment provisions referenced herein.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.

Reference: Sections 13957, Government Code.

Adopt § 649.18 as a new regulation.

§ 649.18. Reimbursement of Funeral/Burial Expenses

(a) All cash payments or reimbursement for expenses of the funeral/burial of the victim must have been incurred as a direct result of the crime.

(b) As funeral practices vary across cultures, the following traditional funeral and burial expenses or their equivalent expenses may be reimbursed up to the statutory maximum, less the amount of reimbursement available from other sources:

(1) Burial costs, including but not limited to expenses for: The burial vault; casket; costs associated with the transport of the body; cremation charges; labor cost for opening and closing the grave; headstone; marker, or tombstone and the charge for it's setting; the single-width, single-depth grave site; and, endowment care—a one time charge controlled by state law that ensures permanent maintenance of the grave.

(2) Funeral service costs, including but not limited to expenses for: Preparation of the body for viewing; Newspaper notices; copies of the death certificate; flowers for gravesite, chapel and hearse; photography costs; musician's fees; burial clothing; cost of transport to the burial site; on-site funeral service fees for chapels or other memorial service locations; gravesite service fees and costs, including equipment charges; and, items necessary for performing services in other cultural traditions.

(3) Memorial service costs including flowers, and pictures and picture frames at the service. Additionally, costs of food and beverages up to \$500.00 of the statutory maximum. Reimbursement for the purchase of alcoholic beverages is not permitted.

(4) If a double grave or headstone has already been purchased, reimbursement may be made based upon a estimate of a single grave or headstone or half the cost of the double grave or headstone, whichever is the less expensive.

(c) The following expenses are not reimbursable by the VCP: Coroner's charges, Finance or interest charges or processing fees on a funeral/burial bill; a pre-purchased funeral or grave for the victim; any expenses based upon a VCP application filed by a mortuary, cemetery or other third party service provider.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.
Reference: Sections 13957(a)(9), Government Code.

§ 649.22. Verification for Payment of Supplemental Claim-Process

All supplemental claims shall contain the information required by Section 649.7(b) and shall be verified in the same manner as an application under Section 649.7.

~~(a) All supplemental claims shall be deemed complete within the meaning of Section 13952(c)(2) of the code only if the applicant or authorized representative provides the following information:~~

~~(1) The name of the applicant, and if different the name of the victim or derivative victim.~~

~~(2) The mailing address and telephone number of the applicant, or any named representative of the applicant if such information has changed since the filing of the application.~~

~~(3) The claim or file number assigned by VOC to the application filed on behalf of the victim or derivative victim.~~

~~(4) A statement that invoices for services received which are appended to the supplemental claim are for services directly related to injuries sustained as a result of the qualifying crime and for no other reason and that such services were actually received by the victim or derivative victim.~~

~~(5) If, since the date of the application, commencement of a civil action is contemplated or has been filed, a statement whether the victim, the victim's survivors, or derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or from any other party in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant, victim, or derivative victim in such civil proceedings.~~

~~(6) In the event that collateral benefits have been applied for or received since the time of filing the application, a disclosure as to these collateral benefits or assistance.~~

~~(b) In addition to the above, a request for supplemental assistance shall contain the following documentation attached to the supplemental claim:~~

~~(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses claimed, including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. If mental health psychotherapy services were provided, a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.~~

~~(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime and the applicant has not previously made a claim for loss of income, he or she shall~~

~~produce evidence of income loss as well as a statement of disability as required by Section 649.7(b)(2) of these regulations. Where documentation of income loss has previously been submitted with the application and no change as to the level of income or earnings has occurred, no further documentation of income loss shall be required to be submitted. Where a statement of disability was previously submitted with the application, but the prognosis for recovery has changed or the term of disability is changed, a new statement of disability shall be required, to be signed by the treating medical or mental health provider. Such statement of disability shall provide that information as is required by Section 649.7(b)(2) of these regulations.~~

~~(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred as of the date of the supplemental claim and not previously submitted.~~

~~(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.24(c) of these regulations.~~

~~(c) Providers may submit the supplemental claims directly to the board in only the following two instances:~~

~~(1) When the victim or derivative victim is a minor; or~~

~~(2) When the provider certifies that they are unable to obtain the applicant's signature, they performed the services billed and the services are related to the qualifying crime.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954, 13957 and 13957.2, Government Code.

~~§ 649.23. Certification~~

~~—All applications and supplemental claims shall be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, by a provider or by an authorized representative.~~

AUTHORITY:

Note: Authority cited: Sections 13952 and 13974, Government Code. Reference: Sections 13952, 13952.5 and 13954, Government Code.

DRAFT

Adopt § 649.23 as a new regulation.

§ 649.23. Reimbursement of Medical-Related Services

(a) All cash payments or reimbursement for medical-related services of the victim must have been incurred as a direct result of the qualifying crime. The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources

(b) Reimbursable medical-related services include, but are not limited to: acupuncture, biofeedback, massage therapy, natural healing methods, and skilled and unskilled in-home supportive services.

(c) In order to be reimbursed for skilled and unskilled in-home supportive services, the victim must obtain verification from a treating physician specifying the reasons in-home supportive services are necessary, the duration the in-home services are needed, and the number of hours needed daily. A treating physician must re-certify the need for in-home supportive services at 60-day intervals.

(d) Skilled in-home supportive services must be provided by the following: licensed nurse, medical social worker, licensed therapists, or a state certified home health aide attendant.

(e) Unskilled in-home supportive services may be provided by family members or other persons to assist a victim that is unable to perform daily tasks such as walking, bathing, dressing, preparing meals or similar major-life functions. Unskilled in-home services are limited to eight hours a day and 40 hours per week.

(f) Medical-related expenses are reimbursable by the VCP at the rates and within the limitations established by the Board pursuant to Government Code section 13957.2.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.

Reference: Sections 13957(a)(1) and 13957.2, Government Code.

§ 649.24. Authorized Indemnification

(a) The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.

(ba) Any cash payments made in response to an application or supplemental claim, arising out of the same crime, shall not exceed the monetary limits permitted by statute for a single application ~~filed pursuant thereto.~~

~~(cb)~~ Personal Property. Except as provided for in Government Code sections ~~13951(e)~~ and 13957(a)(1), the Board ~~shall~~ may not indemnify a victim for loss of money or loss or damage to personal property sustained in the crime giving rise to the application.

~~(c) Rehabilitative Services. Cash payments for job retraining or similar employment-oriented services will be paid to or on behalf of; the person sustaining the physical injury, or in the event of his death or continuing disability, only to or on behalf of those persons who were directly dependent on him for their major support. Persons requesting cash payment for rehabilitative services must clearly indicate the type of services or retraining contemplated, the intended provider of the services, the cost thereof, and the need for the services. The applicant must also certify, to the satisfaction of the Board, that such assistance is not available from some other tax-supported program.~~

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957 and 13957.5, Government Code.

~~§ 649.25. Reimbursement Calculation~~

~~—The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.~~

AUTHORITY:

Note: Authority cited: Section 13920, Government Code. Reference: Sections 13951 and 13957(b), Government Code.

DRAFT

Adopt § 649.25 as a new regulation.

§ 649.25. Rehabilitative Services

Cash payments for job retraining or similar employment-oriented services will be paid to or on behalf of a victim after the following verification:

(a) The victim first shall apply for assistance from the California Department of Rehabilitation (“DOR”) and obtain an evaluation and assessment. If the victim is not a resident of California, the victim must apply to the equivalent public agency where he or she resides.

(b) If the DOR denies the victim job retraining or the victim has obtained all the job training opportunities available to the victim through DOR, the victim may seek job retraining from a private provider and will be reimbursed in accordance with the DOR or an other public agency evaluation.

(c) Persons requesting cash payment for private rehabilitative services shall clearly indicate the type of services or retraining contemplated, the intended provider, the cost, and the need for the services.

(d) The applicant shall also certify, to the satisfaction of the Board, that such assistance is not available from some other tax-supported program.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957 and 13957.5, Government Code.

§ 649.26. Objection to Direct Payment

The Board shall inform the victim or derivative victim of his or her right to object to direct payments by ~~VOCVCP~~ to providers of services in accordance with Government Code sSection 13957.7(c)(1) of the code. In the event that the victim or derivative victim asserts such right the ~~VOCVCP~~ shall may reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments, subject to the rates and limitations set by the Board. ~~Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code, Reference: Section 13957.7, Government Code.

DRAFT

§ 649.27. Third Party Verification

In all cases where ~~VOCVCP~~ requests verification from hospitals, physicians, law enforcement officials or other interested parties and these third parties fail to return the requested information within 10 (ten) days as specified in Section 13954(a) of the code, the ~~board~~Board may through its staff, review the application and all attachments as filed by the applicant and may, in the exercise of its sound judgment, deem the application to be verified based solely on a review of those documents.

AUTHORITY:

Note: Authority cited: Sections 13952.5, 13954 and 13974, Government Code.

Reference: Sections 13952.5 and 13954, Government Code.

DRAFT

Adopt § 649.29 as a new regulation.

§ 649.29 Authorized Mental Health Providers

Psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime may only be reimbursed if provided by any of the following individuals:

(a) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(d) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(e) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or Board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(f) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(g) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(h) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a Board certified psychiatrist.

(i) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a person licensed by the state to provide mental health services, as approved by the Board.

(j) A person who qualifies as a postdoctoral psychology trainee employed in an exempt setting pursuant to Business and Professions Code, Section 2910, or employed pursuant to a State Department of Mental Health waiver pursuant to Welfare and Institutions Code, Section 5751.2, who is under the supervision of a person who is licensed by the state to provide mental health services as approved by the Board.

(k) A psychiatric resident who has completed at least the first year of residency and is under the supervision of a psychiatrist licensed by the state, as approved by the Board.

(l) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered nursing, or an advanced practice registered nurse certified as a clinical nurse specialist under Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code, who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) Any mental health provider approved by the Board under Section 13957(a)(2)(D)(ii).

(n) Nothing in this section shall prevent the VCP from reimbursing peer counseling services under Section 13957(a)(2), subject to the rates and limitations set by the Board.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957(a)(2)(D)(i), Government Code.

§ 649.30. Lien

In all cases the victim, ~~or derivative, or applicant~~ victim shall execute a lien in favor of the Restitution Fund, which ~~lien~~ shall be submitted with the application and may be utilized by the ~~VOCVCP~~ to seek reimbursement in the event that ~~subsequent civil proceedings based on the qualifying crime~~ are commenced and result in any recovery of funds successfully prosecuted.

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Section 13963, Government Code.

DRAFT

§ 649.31. Collateral Benefits

In the event that other collateral benefits are disclosed as required during verification, the applicant shall obtain and provide a written explanation of such benefits from the insurer, or benefit program setting forth a determination of eligibility as regards the victim, the victim's survivors, or derivative victim as well as the dollar amount of assistance or reparations to which the victim, the victim's survivors, or derivative victim is entitled. In the event that the applicant is unable to obtain an explanation of benefits, the ~~VOGVCP~~ or joint powers victim witness center shall take steps to obtain such explanation of benefits or other verification from the insurer or benefit program. If a supplemental claim or expense is directly related to the qualifying crime and requested information is not received after a reasonable amount of time, the supplemental claim or expense will be considered allowed. However, no payment will be made until the necessary information regarding collateral benefits is received. and the application or portion of the application governed by such explanation of benefits shall be treated as "zero award" until such time as the explanation of benefits is received.

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957(b), Government Code.

DRAFT

Adopt § 649.32 as a new regulation. Note: Existing Rule 649.9 discusses evidence of income loss. Some language from that regulation moved to this regulation.

§ 649.32 Verification of Income or Support Loss

(a) All cash payments or reimbursement for income or support loss shall be necessary as a direct result of the crime.

(b) Income loss includes, but is not limited to, time lost from work for medical or mental health appointments necessary as a direct result of the crime.

(c) Evidence of income loss may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number, or wage abstract from the Employment Development Department, or a profit/loss statement for self-employed victim or application generated and signed by a certified public accountant. For a self-employed victim or applicant, the income loss will be calculated based upon the adjusted gross income.

(d) Evidence of income loss may also include payment based upon a bona fide job offer, including but not limited to a job offer on the employer's letterhead with the employer's signature and federal tax identification number stating the terms of employment, work order or contracts for jobs in progress.

(e) The treating medical or mental health provider may verify disability within the scope of his or her licensure. A statement of disability provided by the treating medical or mental health provider shall include information concerning the prognosis for recovery, the extent and expected duration of the disability, and certification that the disability resulted directly from the qualifying crime.

(1) For physical injuries, a disability statement may come from the following treating providers: medical doctor, osteopath, optometrist, dentist, podiatrist, or a chiropractor. If a chiropractor provides the disability statement, it will only be accepted for a disability period of one year.

(2) For emotional injuries, a disability statement may come from any treating licensed social worker, marriage and family therapist, licensed clinical psychologist or treating psychiatrists for a disability period of six months. When the total disability period exceeds six months, the disability statement must be completed by a treating licensed clinical psychologist or psychiatrist.

(f) A disability statement should contain sufficient information to verify the disability period that is a direct result of the crime. The following methods may also be used to verify disability time period, including but not limited to:

(1) A disability period is presumed for a period of up to seven days for crime-related injuries, or

(2) the shortest time period in the Medical Disability Adviser for physical injuries and type of work done by the victim or applicant.

(g) The maximum income loss to be paid under Section 13957.5 shall be calculated based upon whether the cumulative disability period is no more than five years following the crime.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.

Reference: Sections 13957(a)(4) and 13957.5, Government Code.

DRAFT

Adopt § 649.33 as a new regulation.

§ 649.33 Derivative Victims Eligible for Support Loss

(a) A derivative victim may be eligible for reimbursement of support loss if the derivative victim was legally dependant on the victim at the time of the crime.

(b) A derivative victim who is legally dependent on the victim at the time of the crime, includes but is not limited to:

(1) a minor child who is the legal dependent of each parent or legally adoptive parent unless the minor child is emancipated or parental rights have been terminated,

(2) each spouse or registered domestic partner is the dependent of the other spouse or registered domestic partner, or

(3) an incapacitated adult that is the legal dependent of another adult or an unborn child conceived before the date of the crime.

(c) Evidence of legal dependency, includes but is not limited to, birth certificates, marriage certificates, certificate of domestic partnership, medical records, adoption records, child support records, orders granting legal custody, alimony awards, settlements or agreements for spousal support, income tax records, Social Security disability or survivor benefits, veteran's death benefits, worker's compensation disability or death benefits, or any court order finding legal dependency or ordering support.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.

Reference: Sections 13957(a)(4) and 13957.5(a)(4), Government Code.

§ 649.35. Duty of Local Law Enforcement Agencies

Notice of the Victims of Crime Act shall be given by local law enforcement agencies either in person or by mail, or in conjunction with local victim witness assistance centers, to all victims of crimes or their dependents at the time of the incident or as soon as possible thereafter. The notice as required by Government Code Section 13962(b) shall be given in accordance with the written procedures developed by the agency pursuant to Section 649.36 of this article. In addition, new officers shall be advised by their superiors upon entering service of the particulars of the ~~VOG~~VCP Program. Instruction concerning the program shall be made a part of the training curriculum for all trainee officers.

AUTHORITY:

Note: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

DRAFT

§ 649.36. Victims of Crime Liaison Officer

Each local law enforcement agency shall designate a Victims of Crime Liaison Officer. The ~~State Board of Control~~VCP shall be advised of the name, business address and telephone number of the person appointed. In carrying out the agency's responsibility under California Government Code Section 13962(b) and Section 649.35 of this article, the Liaison Officer shall devise and implement written procedures whereby victims, or their dependents or family, are notified and provided forms for filing under the ~~VOG~~VCP ~~Program~~. These procedures shall be available for examination, upon request, by the ~~board~~Board. It shall also be the responsibility of the Liaison Officers or their designees to respond to inquiries from interested persons concerning procedures for filing a claim under ~~this program~~ the VCP. Liaison Officers or their designees shall provide to interested persons applications supplied by the ~~board~~VCP explaining the ~~VOG~~VCP ~~Program~~.

AUTHORITY:

Note: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

DRAFT

Adopt § 649.48 as a new regulation.

§ 649.48 Human Trafficking

Factors that may be considered evidence of human trafficking include, but are not limited to,

(a) certification or eligibility letter from a government agency for a special visa as a refugee due to human trafficking or other government benefits as a result of human trafficking;

(b) medical records documenting injuries consistent with human trafficking.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974 Government Code.
Reference: Section 13956(b)(3), Government Code.

DRAFT

§ 649.50. Involvement in a Vehicle-Related Qualifying Crime

(a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:

(1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit; ~~or~~

(2) the victim or derivative victim was driving while under the influence of drugs; or

(3) the victim or derivative victim was cited or arrested by law enforcement as a result of the qualifying crime.

(b) If any of the factors listed in subsection (a) caused the qualifying crime, the application may be denied for participation in the qualifying crime under section 649.51.

(c) A victim or derivative victim who was the passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if one of the following was present:

(1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or

(2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(d) Subsection (c) ~~shall~~ does not apply if:

(1) the victim is under 14 years of age; or

(2) the victim is ~~between 14 and 17~~ under 18 years of age and the driver of the vehicle was the parent or guardian of the victim.

(e) Subsection (c) may not apply if the victim is ~~between 14 and 17~~ under 18 years of age and the driver of the vehicle is an adult who had responsibility for the victim other than the victim's parent or guardian.

(f) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (Vehicle Code section 20001) if both of the following are present:

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and

(2) the victim's or derivative victim's conduct ~~contributed~~ was the primary cause of the vehicle collision to the events leading to the qualifying crime.

(g) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a) and (f).

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

DRAFT

§ 649.51. Participation in the Qualifying Crime

(a) A victim or derivative victim who knowingly and willingly participated in the commission of ~~a the qualifying~~ crime shall not be eligible for assistance.

(1) This subsection shall not apply if the ~~qualifying~~ crime is a violation of Penal Code section 261.5 [Unlawful sexual intercourse with a minor] occurring on or after January 1, 1999.

(b) A derivative victim is not eligible for assistance if the victim of the same qualifying crime knowingly and willingly participated in the commission of the qualifying crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of the ~~qualifying~~ crime if the victim or derivative victim was any of the following:

(1) a perpetrator;

(2) a co-conspirator; or

(3) an accomplice.

(d) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the ~~qualifying~~ crime when determining whether the victim or derivative victim participated in the commission of the ~~qualifying~~ crime.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.57. Mitigation of Involvement in the Events Leading to the Qualifying Crime

(a) Factors that may be considered to mitigate involvement in the events leading to the qualifying crime include, but are not limited to:

(a1) the victim suffered an injury that was significantly more serious than reasonably could have been expected as a result of his or her involvement in the events leading to the qualifying crime;

(a2) another person involved in the events leading to the qualifying crime escalated his or her conduct in a manner not reasonably foreseeable by the victim or derivative victim;

(a3) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(b) If it is determined that the application should be granted in part because of the existence of any mitigating factor, the victim or derivative victim will only be eligible for medical expenses incurred up to seven days from the date of the qualifying crime and funeral burial expenses.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

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§ 649.58. Self Defense

A victim ~~or derivative victim shall~~ will not be found to be involved in the events leading to the qualifying crime if the sole involvement of the victim ~~or derivative victim~~ was in self-defense.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

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§ 649.59. Failure to Cooperate with Law Enforcement

(a) A victim or derivative victim shall reasonably cooperate with any law enforcement agency in its investigation of the qualifying crime and the apprehension and ~~conviction~~prosecution of any person involved in the qualifying crime.

(b) A victim or derivative victim who knowingly and willingly failed to reasonably cooperate with a law enforcement agency in the investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime ~~shall not be~~ is not eligible for assistance.

(c) A victim or derivative victim who initially cooperated with a law enforcement agency as required by subsection (a), and was determined to be eligible for assistance, and subsequently knowingly and willingly failed to cooperate with a law enforcement agency, may be found eligible for assistance only during the period the victim or derivative victim cooperated with a law enforcement agency.

(d) A derivative victim is not eligible for assistance if the victim of the same qualifying crime failed to cooperate with a law enforcement agency as required by subdivision (a).

(e) Cooperation with a law enforcement agency includes, but is not limited to:

- (1) reporting the qualifying crime;
- (2) completely and truthfully responding to requests for information in a timely manner;
- (3) cooperating with identifying and apprehending any person involved in the qualifying crime; and
- (4) testifying in all proceedings, including restitution proceedings, as required.

(f) A victim or derivative victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(1) A victim or derivative victim whose action or failure to act required a law enforcement agency to expend additional effort to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(2) A victim or derivative victim whose action or failure to act unreasonably impeded or impaired the investigation of the qualifying crime, or the apprehension or conviction of any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(g) In order to determine that a victim or derivative victim failed to cooperate with a law enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely affected a law enforcement agency as described in subsection (f).

(h) The failure of a victim or derivative victim to perform any of the duties described in subsection (e)(2) through (4) may be found to be a failure to cooperate with a law enforcement agency even if the failure did not adversely affect a law enforcement agency as described in subsection (f).

(i) Factors that may be considered when assessing a victim's or derivative victim's cooperation with a law enforcement agency include, but are not limited to:

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

(5) reasonable fear of retaliation or harm to self or family.

(j) The factors listed in subsection (i) shall be considered when assessing a minor victim's cooperation with a law enforcement agency.

(k) The assessment of a victim's or derivative victim's cooperation with a law enforcement agency shall be based on all available evidence, including supplemental crime reports. Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim cooperated with law enforcement.

(l) The eligibility of a minor victim shall not be affected by the failure of the minor victim's parent, legal custodian, or legal guardian to cooperate with a law enforcement agency.

(m) A minor derivative victim ~~shall~~is not be eligible if both of the following are true:

(1) the minor derivative victim's parent, legal custodian, or legal guardian is the victim through whom the minor seeks to qualify as a derivative victim; and

(2) the person described in subsection (m)(1) failed to cooperate with a law enforcement agency.

(n) An application from a non-offending parent concerning a child sexual abuse qualifying crime ~~shall~~may not be denied under subsection (a) for failing to timely report the qualifying crime to a law enforcement agency if the non-offending parent otherwise cooperated with a law enforcement agency.

(o) For the purposes of this section, "law enforcement agency" includes a child protective services agency.

(p) For the purposes of this section, "conviction" ~~shall~~includes the imposition of restitution.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

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§ 649.62. Failure to Cooperate with Board or Staff

(a) An application may be denied based on an applicant's failure to ~~an applicant shall cooperate with the Board, VCP and its staff, and or the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.~~

~~(b) An application may be denied for an applicant's failure to comply with subsection (a).~~

~~(c)~~ (b) An applicant may be found to have failed to cooperate ~~under subsection (a) if both~~ if either of the following are present:

(1) the applicant has information available to him or her, or which the applicant may reasonably obtain, that is needed to process the application or supplemental claim available to him or her, or which the applicant may reasonably obtain; and the applicant failed to provide the information after being requested to do so; or

~~(2) the applicant failed to provide the information after being requested to do so.~~

(2) the applicant provided or caused other to provide false information regarding the application or supplemental claim.

AUTHORITY:

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13954, Government Code.